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SENATE BILL 598 By
Cooper

HOUSE BILL 677
By Kisber

AN ACT to amend Tennessee Code Annotated, Title 68, relative to health.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-11-830, is amended by deleting subsection (d) in its entirety and by substituting instead the following language:

(d)

(1) Effective July 1, 1993, each intermediate care facility for the mentally retarded (ICFMR) shall pay a tax at the rate set forth in this subsection. Licensed facilities which are owned or operated by an agency of the state are not excluded from paying the tax.

(2)

(A) For the period July 1, 1993, through June 30, 1994, the tax shall be at a rate of six percent (6%) of the annual gross receipts of an intermediate care facility for the mentally retarded operating in this state. The tax due from facilities that are not one hundred percent (100%) ICFMR-certified shall be at the rate of six percent (6%) of the annual

gross receipts generated from beds certified as intermediate care beds for the mentally retarded in the facility. Such tax shall be due on or before July 15, 1994.

(B) Effective July 1, 1994, the tax shall be at the rate of six percent (6%) of the monthly gross receipts of an intermediate care facility for the mentally retarded operating in this state. The tax due from facilities that are not one hundred percent (100%) ICFMR- certified shall be based at the rate of six percent (6%) of the monthly gross receipts generated from beds certified as intermediate care beds for the mentally retarded in the facility. Such tax shall be paid monthly based on the amount of the tax established in this subdivision. The monthly payments are due on the fifteenth of each following month, beginning August 15, 1994, for the July 1994 payment, and ending with a final payment on July 15, 2001.

(3) The commissioner of health shall adopt rules and regulations governing the collection of such taxes. Notwithstanding any other provision of law, the commissioner is authorized to promulgate such rules as public necessity rules pursuant to the rulemaking provisions of the Uniform Administrative Procedures Act, codified a Section 4-5-209.

(4) Any challenge to the tax imposed by this subsection shall be brought pursuant to Title 67, Chapter 1, Part 9 and Section 9-8-307(a)(1)(O).

(5) All revenue collected pursuant to this subsection shall be deposited in the general fund.

(6)

(A) If any part of any tax imposed under this subsection is not paid on or before the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added to such tax. Thereafter, on the

first day of each month during which any part of any tax or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added to such tax or prior accrued penalty. In addition, taxes under this subsection not paid on the due date shall bear interest at the maximum lawful rate from the due date to the date paid. Payment shall be deemed to have been made upon date of deposit in the United States mail. The commissioner may, for good cause, approve an alternative payment plan as long as full payment of the tax is made.

(B) If an ICFMR is more than sixty (60) days delinquent in paying its monthly amount, the commissioner of mental health and developmental disabilities may initiate proceedings to revoke the license of the facility in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(C) If a facility is more than thirty (30) days delinquent in paying the amount of its tax or any installment of an alternative payment plan approved by the board or commissioner, the commissioner of health has the additional authority to deduct the amount owing from the facility's forthcoming medicaid payments and to notify the facility that it will be locked into a process by which the monthly installment will automatically be deducted from each month's medicaid payment for an appropriate period of time, as determined by the state. The facility will also be notified of an opportunity to request a hearing before the commissioner or the commissioner's designee to consider the sole issues of whether the amount of the tax was proper and whether the payment of the tax was more than thirty (30) days delinquent. If requested by the facility, this

hearing shall be promptly held but in no case shall the pendency of a hearing result in delay of the deductions envisioned herein.

(7) The tax imposed by this subsection may not be billed by the ICFMR as a separately stated charge, but this shall not prevent the ICFMR from adjusting its rates to defray the cost associated with the tax.

(8) The fiscal review committee shall review and have oversight of the implementation of the provisions of this subsection.

(9) Any tax obligation imposed by this subsection shall be suspended to the extent that and for the period that receipt of the tax by the state results in a corresponding reduction in federal financial participation under the TennCare waiver or any other program under Title XIX of the federal Social Security Act.

(10) The tax established by this subsection shall terminate on June 30, 2001.

SECTION 2. This act shall take effect July 1, 2001, the public welfare requiring it.